

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
JAIME RANGEL and)	BANKRUPTCY NO. 06-62188 JPK
CAROLINE RANGEL,)	Chapter 13
)	
Debtors.)	

ORDER ON MOTION TO DETERMINE MORTGAGE PAYMENT ["MOTION"]

The debtors, by counsel, filed the Motion on March 23, 2007. The request for relief stated in the Motion is that the "court enter an Order requiring Countrywide Home Loans to provide the Debtors with an analysis of their current mortgage payment".

The Motion appears to arise from the debtors' uncertainty as to the amount of the payment to be maintained by the debtors pursuant to 11 U.S.C. § 1322(b)(5) with respect to the creditor's claim.

The operative facts stated in the Motion are that apparently the creditor has asserted an increase in the payment to be maintained by the debtors pursuant to 11 U.S.C. § 1322(b)(5) which the debtors either do not comprehend, or with which the debtors do not agree. Without question, the subject matter of the Motion is within the jurisdiction of this Court: Because the matter raised by the Motion is necessary for determination of the debtors' compliance with 11 U.S.C. § 1322(b)(5), the matter "arises in" a case under Title 11 [11 U.S.C. § 1334(b)], and thus is within the jurisdiction accorded to this Court by the United States District Court pursuant to 28 U.S.C. § 157(a)/L.R. 200.1(a) of the United States District Court for the Northern District of Indiana.

The issue raised by the Motion thus does not involve the Court's subject matter jurisdiction. Rather, it involves the procedural mechanisms by which the debtors must proceed.

The debtors seek a determination by the Court of the amount required by them to be paid pursuant to 11 U.S.C. § 1322(b)(5) as the amount necessary to "maintain" payments with

respect to the secured claim of a mortgagee within the provisions of 11 U.S.C. § 1322(b)(2). The debtors apparently dispute the amount asserted by the creditor necessary to conform to these statutory requirements. The debtors' request is essentially a request to determine an account arising under the contractual arrangements between the debtors and the creditor, particularly in view of the fact that the adjustment in the payment allegedly asserted by the creditor results in adjustments in relation to an escrow account maintained by the creditor in relation to the debtors' obligations to the creditor. There is no provision in the Bankruptcy Code for this type of action.¹ The debtors' action most nearly parallels an action for the common law remedy of an "accounting", the origins of which are lost in the mists of time.²

State law may or may not be controlling with respect to the underlying nature of the remedy sought by the Motion, but it is at the very least instructive. In terms of Indiana law, the debtors' assertions are in essence a request for the Court to undertake the equitable determination of an "accounting"; See, *Denny v. Scoonover*, Ind. App. in Banc., 153 N.E. 779, 781 (1926); *Atwood v. Prairie Village, Inc.*, Ind. App. 401 N.E.2d 97, 100 (1980); *Anacomp, Inc. v. Wright*, Ind. App. 449 N.E.2d 610, 615-616 (1983); *rehmg den.*, (1983); *Lester v. Hinkle*, Ind. 141 N.E. 463 (1923). While the foregoing cases do not directly address the nature of the issue presented by the debtors to the Court, they are clear enough in their analytical underpinnings that the request made by the debtors invokes the equitable jurisdiction of the Court. That being so, the debtors' request falls within the provisions of Fed.R.Bankr.P. 7001(7) – "a proceeding to

¹ The Court eschews reliance upon 11 U.S.C. § 105(a) in this context.

² "Equitable jurisdiction for an accounting is usually invoked in cases where: (1) there is a fiduciary relationship between the parties, accompanied by a duty on the part of the defendant to render an account; (2) there are mutual accounts, or, if the account is all on one side, the account is complicated; and (3) there is a need for discovery. A court may also assume jurisdiction where other grounds for invoking equity, such as fraud, multiplicity of suite, and various other grounds, are present." 1 Am.Jur.2d., Accounts and Accounting, § 54, p. 611 (1994).

obtain . . . other equitable relief", i.e., an accounting as to the amount the debtors are required to pay to a fiduciary account with respect to the debtors' obligation to that account. Because the debtors request a determination as to the amount to be paid, rather than an accounting of the amount actually paid, the proceeding falls within the provisions of Fed.R.Bankr.P. 7001(9), as constituting "a proceeding to obtain a declaratory judgment relating to" "other equitable relief" under Fed.R.Bankr.P. 7001(7).³

The Court thus determines that it has jurisdiction with respect to the matter addressed by the Motion. However, the procedural mechanism employed by the debtors to present this matter to the Court is not correct: The matter must be presented by an adversary proceeding.⁴

The Court finds that the debtors' request does not properly present a judicable matter to

³ Apart from considerations of state law, a remedy for "an accounting" is an equitable remedy sanctioned by federal law in relation to matters before a federal court; *Bates v. Northwestern Human Services, Inc.*, 466 F. Supp.2d 69, 103-104 (D.C.D.C.C. 2006).

⁴ The Court notes that 12 U.S.C. § 2605(e) provides a mechanism by which the debtors may receive information relating to the substance of their Motion if their mortgage is "a federally related mortgage loan", by means of making a "qualified written request" to the servicer of the loan. 12 U.S.C. § 2605(f) provides monetary remedies with respect to servicers who fail to comply with the requirements of 12 U.S.C. § 2605. Whether or not the United States Bankruptcy Court for the Northern District of Indiana has jurisdiction pursuant to 12 U.S.C. § 2614 with respect to a failure to comply with the law's requirements concerning a "qualified written request" is a question for another day. However, suffice it to say that debtors must utilize the provisions of 12 U.S.C. § 2605(e) before seeking redress in this Court with respect to an issue which a "qualified written request" may answer. The debtors are seeking an equitable remedy. In order to establish their entitlement to this equitable remedy, the debtors must demonstrate that they have exhausted their legal remedies, and that resort to the Court's equitable jurisdiction is necessary to obtain relief to which they may be entitled; See, *Adamszewski v. Local Lodge 1487, AFL-CIO, et al.*, 496 F.2d 777, 786 (7th Cir. 1974) ["To be entitled to injunctive relief a party must show that he has no adequate remedy at law and will suffer irreparable harm unless the injunction issues"]. Failure to exhaust statutory (i.e., legal) remedies before seeking to invoke a federal court's equity jurisdiction fails to validly invoke the court's equity jurisdiction; *In re Leonard*, 125 F.3d 543, 546 (7th Cir. 1997). The debtors have a statutory, i.e. legal, remedy which the record does not establish they have exhausted. Thus, even if the debtors reassert their request to the Court in the form of an adversary proceeding, absent establishing that they have pursued the remedy provided by 12 U.S.C. § 2605(e) and have not been accorded the relief provided by that legal remedy, any resort to invocation of the Court's equitable jurisdiction to require an accounting will fail.

the Court.

IT IS ORDERED that the debtors' Motion is denied, without prejudice to submission to the Court of the controversy raised by the debtors in accordance with applicable law and procedures.

Dated at Hammond, Indiana on May 3, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee